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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO

13 REBECCA TAYLOR, and C.T., a minor by
14 REBECCA TAYLOR, C.T., 's parent and
guardian, on behalf of themselves and all others
15 similarly situated,

16 Plaintiff,

17 v.

18 Apple Inc.,

19 Defendant.
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Case No. 3:20-CV-03906-RS

**DECLARATION OF ANDREW
AZARMI IN SUPPORT OF APPLE
INC.'S MOTION TO DISMISS
COMPLAINT**

Date: October 1, 2020
Time: 1:30 p.m.
Dept: Courtroom 3, 17th Floor
Judge: The Hon. Richard Seeborg

Complaint filed: June 12, 2020
Trial Date: None set.

I, Andrew Azarmi, declare as follows:

1. I am a member of the bar of this Court and a litigation partner with the law firm of Dentons US LLP, counsel of record for Defendant Apple Inc. (“Apple”). I make this declaration in support of Apple’s Motion to Dismiss the Complaint (“Motion”). Unless otherwise stated, the contents of this declaration are based upon my personal knowledge and, if called to testify, I could and would testify competently about the matters in this declaration.

2. Attached to Apple’s concurrently-filed Request for Judicial Notice in Support of the Motion (“RJN”) as Exhibits A–E are various terms and conditions the Complaint puts at issue, as accessed by my office on August 19, 2020. Specifically:

a. **Exhibit A** is a true and correct copy of the Apple Media Services Terms and Conditions, last updated May 13, 2019, which is available at the publicly-accessible website:

<https://www.apple.com/legal/internet-services/itunes/us/terms.html>.

b. **Exhibit B** is a true and correct copy of third-party game developer Supercell’s Terms of Service, last updated July 1, 2020, which is available at the publicly-accessible website:

<https://supercell.com/en/terms-of-service/>.

c. **Exhibit C** is a true and correct copy of relevant excerpts from Electronic Arts Application End User License Agreement, which is available at the publicly-accessible website:

<http://tos.ea.com/legalapp/mobileeula/US/en/OTHER/>.

d. **Exhibit D** is a true and correct copy of relevant excerpts from Nintendo’s User Agreement, which is available at the publicly-accessible website: [https://www.nintendo.com/terms-](https://www.nintendo.com/terms-of-use/)

[of-use/](https://www.nintendo.com/terms-of-use/).

e. **Exhibit E** is a true and correct copy of relevant excerpts from Roblox’s Terms of Use, last updated December 9, 2019, which is available at the publicly-accessible website:

<https://en.help.roblox.com/hc/en-us/articles/115004647846-Roblox-Terms-of-Use>.

3. Attached to Apple’s concurrently-filed RJN as Exhibits F–K are various support guides that the Complaint puts at issue, all of which were accessed by my office on August 19, 2020. Specifically, attached to my declaration are:

a. **Exhibit F** is a true and correct copy of relevant excerpts from Supercell’s

1 Parent's Guide, which is available at the publicly-accessible website:

2 <https://supercell.com/en/parents/>.

3 b. **Exhibit G** is a true and correct copy of relevant excerpts from Supercell's
4 Player Support guide. I accessed the pages titled "What are tokens?"; "What are gems used for an
5 how do I get them?"; and accessed "Is Brawl Stars Free to Play" from the publicly-accessible
6 website: <https://supercell.helpshift.com/a/brawl-stars/?l=en&p=web>.

7 c. **Exhibit H** is a true and correct copy of relevant excerpts from Electronic Art's
8 Help guide: "How to turn off in-game purchasing," last updated April 17, 2017, which is available at
9 the publicly-accessible website: [https://help.ea.com/en-us/help/account/take-control-of-in-game-](https://help.ea.com/en-us/help/account/take-control-of-in-game-purchasing)
10 [purchasing](https://help.ea.com/en-us/help/account/take-control-of-in-game-purchasing).

11 d. **Exhibit I** is a true and correct copy of relevant excerpts from Roblox's
12 parent's guide, "Parents, Safety and Moderation," which is available at publicly-accessible website:
13 <https://en.help.roblox.com/hc/en-us/articles/203313120-Safety-Features-Chat-Privacy-Filtering>.

14 e. **Exhibit J** is a true and correct copy of Nintendo Mario Kart Tour parent's
15 guide, "Information for Parents/Guardian," which is available at the publicly-accessible website:
16 <https://mariokarttour.com/en-US>.

17 f. **Exhibit K** is a true and correct copy of relevant excerpts from Apple's guide,
18 "Use parental controls on your child's iPhone, iPad, and iPod touch," referenced in Apple's terms,
19 which is available at the publicly-accessible website: <https://support.apple.com/en-us/HT201304>.

20 4. The Complaint also asserts that legislators and regulators "all agree" that loot boxes
21 "operate as gambling devices." Compl. ¶ 8. To support this, the Complaint cites certain legislative
22 and regulatory actions (*e.g., id.* ¶¶ 9–10, 77–80), but neglects to mention the disposition of some of
23 those actions, and fails to provide the Court with the publicly-known positions of others. I am
24 therefore providing the Court with fuller information about the disposition of some of the actions
25 cited in the Complaint as support:

26 a. The Complaint cites the California Legislature. Compl. ¶ 1. In 2018,
27 California Assembly member Dr. Bill Quirk introduced assembly bill (AB2194) which put
28 regulations on in-app purchases, such as loot boxes. The bill failed to make it to a vote. Assem. Bill

2194, 2017–2018 Reg. Sess. (Cal. 2018) (from committee without further action on Nov. 30, 2018).

Available at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2194

b. The Complaint cites the FTC as looking at loot boxes. Compl. ¶ 80. The FTC held a workshop in 2019 for panelists to discuss loot boxes in games. FTC to Hold August Workshop on Consumer Issues Related to Loot Boxes, FEDERAL TRADE COMMISSION (April 5, 2019) <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-hold-august-workshop-consumer-issues-related-loot-boxes>. The FTC released a staff perspective paper on loot boxes, which did not put any restrictions or take any specific position on loot boxes and stated it would “continue to monitor developments surrounding loot boxes and take appropriate steps to prevent unfair or deceptive practices.” The only mention of Apple was in response to some commenters concern about the transparency of loot boxes, where the FTC pointed out that Apple already requires all mobile apps with loot boxes to disclose odds. FTC Video Game Loot Box Workshop: Staff Perspective Paper (Aug. 14, 2020) https://www.ftc.gov/system/files/documents/reports/staff-perspective-paper-loot-box-workshop/loot_box_workshop_staff_perspective.pdf

5. The Complaint also cites Hawai‘i, Washington and Minnesota. Compl. ¶ 77. And U.S. Congress. Compl. ¶ 80.

a. Hawai‘i legislators introduced two House bills and one Senate bill that would have regulated loot boxes in video games. All failed to meet final deadlines since being introduced in January 2018, while a second Senate bill was amended from its original purpose to a completely unrelated subject. H.R. Bill 2686, 2017–2018 Reg. Sess. (Hawai‘i 2018); H.R. Bill 2727, 2017–2018 Reg. Sess. (Hawai‘i 2018); S. Bill 3024, 2017–2018 Reg. Sess. (Hawai‘i 2018); S. Bill 3025, 2017–2018 Reg. Sess. (Hawai‘i 2018). Hawai‘i legislation can be found here: <https://www.capitol.hawaii.gov/>. Minnesota introduced a bill that would regulate loot boxes but it too failed to pass. H.F. Bill 4460, 2017–2018 Reg. Sess. (Minn. 2018). Minnesota legislation can be found here: <https://www.leg.state.mn.us/>. Washington lawmakers put forward bills to regulate loot boxes, but none have passed. H.R. Bill 2720, 2019–2020 Reg. Sess. (Wash. 2020) (referred to House Committee on Civil Rights & Judiciary Jan. 20 2020); S. Bill 6568, 2019–2020 Reg. Sess. (Wash. 2020); S. Bill 6266, 2017–2018 Reg. Sess. (Wash. 2018). Washington legislation can be found here:

<https://app.leg.wa.gov/billinfo/>.

b. In 2019, Senate Bill 1629 was introduced, which would regulate the sale of loot boxes in interactive digital entertainment. It was referred to the Committee on Commerce, Science and Transportation in May 2019, and no further action was taken. S. 1629, 116th Cong. (2019) (referred to Committee on Commerce, Science and Transportation May 23, 2019). Available at <https://www.congress.gov/bill/116th-congress/senate-bill/1629>.

6. The Danish Gambling Authority put out a statement stating that the winning obtained in a loot box “cannot be converted into monetary value, as the fictional items in the loot box cannot be sold or otherwise converted into money.” Spillemyndigheden, Statement about loot boxes / loot crates, 29/11-2017, <https://www.spillemyndigheden.dk/en/news/statement-about-loot-boxes-loot-crates>.

7. Australian House of Representative Standing Committee on Social Policy and Legal Affairs put out a report stating “gambling or simulated gambling in video games does not fall within the definition of wagering under the Interactive Gambling Act 2001.” House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, Protecting the Age of Innocence (Report, February 2020), https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024436/toc_pdf/Protectingtheageofinnocence.pdf;fileType=application%2Fpdf#page=7&zoom=100,53,84.

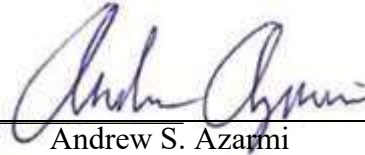
a. A September 2019 House of Commons report stated that the government needs to bring forward regulations to make loot boxes fall under the Gambling act of 2005. Digital, Culture, Media and Sport Committee, Report 2017–19, HC 1846 (UK), <https://publications.parliament.uk/pa/cm201719/cmselect/cmcmds/1846/1846.pdf>. On July 2, 2020, the House of Lords issued a report, also recommending that “Ministers should make regulations under. . . the Gambling Act [2005].” Select Committee on the Social and Economic Impact of the Gambling Industry, Report 2019–21, HL 79 (UK), <https://publications.parliament.uk/pa/ld5801/ldselect/ldgamb/79/79.pdf>. However, no specific action has been taken at this time.

b. In 2017, New Zealand’s Department of Internal Affairs issued a media

1 statement: “Gamers do not purchase loot boxes seeking to win money or something that can be
2 converted into money. They buy loot boxes so that they can use their contents within the game and
3 thereby have a better gaming experience.” Katherine Cross “New Zealand says lootboxes ‘do not
4 meet the legal definition for gambling’” (11 December 2017) Gamasutra: www.gamasutra.com.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing
6 is true and correct and that this declaration is executed on August 24, 2020, in San Francisco,
7 California.

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9 By: _____



Andrew S. Azarmi

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